IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4714 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHANDRESH ALIAS CHANDO NANDLALSEJWANI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 4714 of 2001

MR ANIL S DAVE for Petitioner No. 1

MS BANNA S DUTTA for Petitioner No. 1

MR SS PATEL, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 13/12/2001

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social

Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 31-5-2001 passed by the Police Commissioner, Ahmedabad City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and learned AGP. Also perused the material on record. The only contention raised by the learned advocate for the petitioner is that the authority has relied upon three criminal registered against the detenu and last offence registered was on 22-5-2001 at Naranpura Police Station being Prohi. C.R.No.5117/2001 for passing the detention order which reflects from Annexure-C page 28. According to learned advocate for the petitioner, copy of the statement of the witnesses were not supplied by the authority along with the detention of the order and, therefore, he has made the written representation by R.P.A.D. through advocate on 25-6-2001 which is on record at page 99 wherein he has categorically demanded the statement of the witnesses along with the Crime Register Number, etc. Whereas learned AGP, Mr.S.S.Patel has contended that some statements were sent to the detenu on 8-8-2001. However, facts remain that statements of Kodarji Ratnabhai, Indrasinh Karansinh, Manaharsinh Shivsinh, Narendrasinh Padmasinh, Lalaji Punjaji, Jayanti Bhulabhai and Keshaji Magaji were recorded by the authority admittedly on 12-1-2001, but same were supplied to the detenu only on 8-8-2001 i.e. after a long time and hence, there is a delay in supplying the documents. Mr.Dave, learned advocate for the petitioner has taken me through the index which shows that out of the documents supplied to the detenue, statement of present ones have not been mentioned and, therefore, it is a point which is required to be taken into consideration.

4. He has relied upon the case of Mohd. Zakir Vs. Delhi Administration and Ors., AIR 1982 S.C. 696 at head note as under:

> "Detention-Documents relied on by authorities not supplied with grounds of detention-Detention is illegal."

It has been further held by the Apex Court as under:

> "It is manifest that the question of demanding the documents is wholly irrelevant because it is the constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention pari passu the grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with."

5. It is the duty of the authority to supply copy of the statements and documents with the detention order. Here in this case, out of the documents supplied to the deten along with the order of detention, copies of statements of some of the witnesses as requested by the petitioner by way of represnetation dated 25-6-2001, though relied upon by the authority in passing the impugned order of detention, have not been supplied to the detenu. Therefore, there is infraction of safeguards provided under the provisions of Art.22(5) of the Constitution of India and the petitioner has been deprived of knowing the grounds and making effective representation against the order of detention. Hence, in view of the aforesaid judgment relied upon by the learned advocate for the petitioner, the order of detention is bad and same cannot be sustained.

6. The petition is allowed. The impugned order of detention dated 31-5-2001 passed against the detenu is hereby quashed and set aside. The detenu Chandresh Chando Nandlal Sejwani is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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